



City of Biggs

Agenda Item Staff Report for the Regular City Council Meeting: November 21, 2011 6:00PM

DATE: November 7, 2011

TO: Honorable Mayor and Members of the City Council

FROM: Pete Carr, City Administrator

SUBJECT: Contract Employment Extension (Discussion/Action)

Council will consider extension of the City Administrator employment agreement for a period up to three years as of March 6, 2012.

Background

The City Administrator is engaged with a contractual employment agreement between the City council and the employee. The original agreement was for two years, March 6, 2007-March 5, 2009. This was extended in 2009 with a three-year agreement March 6, 2009-March 5, 2012.

The 2009 agreement provides for up to twelve months' notice of non-intent to renew the contract, with "meet and confer" consideration of contract renewal "not less than 180 days prior to the end of this term," which was September 5, 2011. The intent of this provision is that the administrator be provided with at least six months' notice if the contract will not be renewed.

The 2009 agreement was subsequently amended in 2010 and 2011 to update compensation based on annual performance reviews, pursuant to Section 4.01. These reviews are scheduled annually in March but could be called for additionally at any time. The most recent performance evaluation was held in March 2011.

Section 5.02 Other Benefits (employer pick-up of 2% of PERS contribution) was added in 2009 not implemented, so this section is moot and is eliminated from the agreement extension. Section 4.01 referring to residency in Biggs planning area is also moot and eliminated.

Attachments (2):

2009-2012 Employment Agreement
Proposed 2012-2015 Employment Agreement Extension

Recommendation:

Approve extension as presented or amended.

Fiscal Impact:

None; compensation is in the budget and not under consideration at this time.

EMPLOYMENT AGREEMENT (CITY ADMINISTRATOR) BETWEEN THE CITY OF BIGGS AND PETER R. CARR

The City of Biggs, hereinafter referred to as City, by and through its duly elected City Council Members (Council), located at 465 C Street, Biggs, California, and Peter R. Carr, as City Administrator, in consideration of the mutual promises made herein, agree as follows:

ARTICLE 1. TERM OF EMPLOYMENT

Section 1.01. Term; Extension.

City hereby employs City Administrator and City Administrator hereby continues employment with City as City Administrator for a period of three years, commencing March 6, 2012 and ending March 5, 2015. The parties agree that not less than 180 days prior to the end of this term, they will meet and confer to discuss extension of this agreement.

Section 1.02. "Employment Term" – Defined.

As used herein, the phrase "employment term" refers to the entire period of employment of City Administrator by City hereunder, whether terminated earlier as hereinafter provided or extended by mutual agreement between City and City Administrator.

ARTICLE 2. DUTIES AND OBLIGATIONS OF CITY ADMINISTRATOR

Section 2.01. Duties and Obligations.

City Administrator shall serve as the City Administrator. In the capacity of Department Head and Chief Administrative Officer, City Administrator shall do and perform all services, acts or things necessary or advisable to manage and maintain the business of City, subject at all times to the policies set by City and in accordance with applicable law.

Section 2.02. Faithful Performance.

City Administrator agrees that to the best of his ability and experience he will at all times faithfully, loyally and conscientiously perform all of the duties and obligations required of him either expressly or implicitly by the terms of this agreement.

Section 2.03. Outside Employment.

- (a) City Administrator shall devote his entire production time, ability and attention to the business of City during the term of this agreement; provided, however, upon approval by the Council, that City Administrator may undertake outside activities that do not interfere with the duties and responsibilities of City Administrator's position. Any outside employment shall be presented to the City Council for review.

- (b) This agreement shall not be interpreted to prohibit City Administrator from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this agreement.

ARTICLE 3. OBLIGATIONS OF CITY

Section 3.01. Compensation, Benefits, Expenses.

City shall provide City Administrator with the compensation, incentives, benefits, and expense reimbursement specified elsewhere in this agreement.

Section 3.02. Indemnification for City Losses.

City shall indemnify City Administrator for all losses sustained by City Administrator as a direct consequence of the discharge of his duties on City's behalf.

Section 3.03. Performance Evaluation.

City Administrator shall receive an annual performance evaluation by the Council.

Section 3.04. Independent Authority; Limitation.

Pursuant to pertinent State and Local law, City Administrator has the right to exercise his independent authority over the department, subject to the general direction of the City Council.

ARTICLE 4. COMPENSATION OF CITY ADMINISTRATOR

Section 4.01. Compensation.

- (a) As compensation for the services to be rendered by City Administrator hereunder, City shall pay City Administrator the rate of \$89,297 per year, effective March 6, 2011.
- (b) Upon mutual agreement between City and City Administrator, City Administrator's compensation may be adjusted during the term of this Agreement conditioned upon a satisfactory evaluation of his performance by the City Council at the scheduled annual performance evaluations.
- (c) City Administrator's salary shall in no event be reduced during the term of this agreement except as included in a general salary reduction applied to City employees for which the City Council has the authority to set

salaries. In the event of such salary reduction, it shall be at the same percentage applied to other employees.

Section 4.02. Management Leave.

City Administrator shall be entitled to receive 80 hours of Management Leave annually which shall accrue monthly. In consideration of this benefit, City Administrator agrees to release and waive any and all claims or potential claims which did accrue or may have accrued for overtime compensation or any other such claims under the Fair Labor Standards Act or the California Labor Code from the date of City Administrator's initial hire date through the date of this contract.

ARTICLE 5. CITY ADMINISTRATOR BENEFITS

Section 5.01. Vacation.

City Administrator shall be entitled to annual vacation time each year at the rate applied to all employees. Total accumulated vacation time and management leave, combined, shall not exceed 256 hours. Vacation time and management leave, combined, shall not accumulate beyond 256 hours for the length of this contract.

Section 5.02. Other Benefits.

City Administrator shall receive medical insurance, retirement benefits and all other fringe benefits in amounts and types equal to those of all City employees. City will reimburse City Administrator up to \$80 monthly for cell phone/PDA expenses.

ARTICLE 6. TERMINATION OF EMPLOYMENT

Section 6.01. Termination as City Administrator for Cause.

The City Administrator's status as such and all rights under this contract hereunder may be terminated by the City Council at any time upon a material breach of this contract, for the commission of a felony, for a crime involving moral turpitude or for any conduct bringing substantial discredit to the City. The Council shall not terminate this agreement pursuant to this section until a written statement of grounds for termination has first been served upon the City Administrator. The City Administrator shall then be entitled to a meaningful hearing with the Council and shall have the right to have a representative of his choice at said hearing. The hearing with the Council shall be the City Administrator's exclusive right to any hearing otherwise required by law.

Section 6.02. Early Termination without Cause

Notwithstanding any other provision of the agreement, the Council, in its discretion, shall have the option to terminate this agreement at any time during the term hereof, or upon any extension thereof; provided, however, that if the Council does terminate this agreement, without cause, prior to the expiration of the three (3) year term, the Parties agree that the effective date of such termination shall be twelve (12) months from the date of notice of such termination (notice period). The Council reserves the right to require the City Administrator to continue to provide services under this agreement during all or part of the twelve (12) month notice period. The Council also reserves the right to reject such services during all or part of the twelve (12) month notice period. Upon such rejection, if any, however, the City shall pay to City Administrator salary only (no other benefits) through the end of the notice period. In no case will the notice or severance payment be less than six (6) months. This provision shall not be construed to extend the term of this agreement.

Section 6.03. Effect on Compensation If Early Termination

In the event that this agreement is terminated early, and subject to Section 6.02, City Administrator shall be entitled to the compensation and benefits earned by and vested in him prior to the date of termination as provided for in this agreement, computed pro rata up to and including that date.

ARTICLE 7. GENERAL PROVISIONS

Section 7.01. Affiliation – Professional Associations.

During the term of this agreement and any extensions thereof, City Administrator shall maintain membership in good standing in the International City Management Association (ICMA) and shall subscribe to and act in accordance with the Associations' ethics codes, which are attached hereto as Exhibit "A" and incorporated herein by this reference; and membership in and the California City Management Foundation (CCMF). City agrees to pay the costs of such memberships, which in FY2010-11 were \$707.33 for ICMA and \$400.00 for CCMF. City Administrator shall also maintain membership in good standing in the City Manager's Department of the League of California Cities.

City Administrator, if he chooses to participate in Rotary Club, will be reimbursed up to \$705.00 per year in expenses (approved 4/20/09). This includes \$125.00 in annual membership dues, up to \$480 annually in weekly meeting expense @ \$10/meeting, and up to \$100 in "fines." Any additional Rotary expenses, including all travel, will be non-reimbursable.

Section 7.02. Notices.

Any notices to be given by either party to the other shall be in writing and may be

transmitted either by personal delivery or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notice shall be addressed to the City at P.O. Box 307, Biggs, CA 95917. Mailed notice shall be addressed to the City Administrator at 2090 Hooker Oak Avenue, Chico, CA 95926. Each party may change their address by written notice in accordance with this section. Notices delivered personally shall be deemed communicated as of the date of actual receipt; mailed notices shall be deemed communicated as of the date of mailing.

Section 7.03. Attorney's Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this agreement, the prevailing party shall be entitled to reasonable attorneys fees. This provision shall be construed as applicable to the entire contract.

Section 7.04. Agreement an Entirety.

This agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the employment of City Administrator by City, and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embedded herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding.

Section 7.05. Non-Waiver.

The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power be for all or any other times.

Section 7.06. Effect of Invalidity.

If any provision in this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

Section 7.07. Applicability – California Laws.

This agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year last below written.

Dated: _____

CITY, CITY OF BIGGS
Roger L. Frith, Mayor

Dated: _____

City Administrator
Peter R. Carr

Approved as to form,
Gregory P. Einhorn, City Attorney

EXHIBIT A

ICMA Code of Ethics

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in May 1998. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in September 2002.

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

Tenet 1

Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.

Tenet 2

Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

Tenet 3

Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

Tenet 4

Recognize that the chief function of local government at all times is to serve the best interests of all people.

Tenet 5

Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

Tenet 6

Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.

Tenet 7

Refrain from all political activities, which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

Tenet 8

Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

Tenet 9

Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

Tenet 10

Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

Tenet 11

Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

Tenet 12

Seek no favor; believe that personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest.